

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 25, 2011

Re: Opposition to Raised Bill No. 6622

The Connecticut Trial Lawyers Association (CTLA) respectfully opposes Raised Bill Number 6622, "An Act Concerning the Burden of Proof in Medical Malpractice Cases and the Standard of Care Related to Emergency Medical Care and Treatment". CTLA respectfully submits that this proposed legislation, which would completely change the burden of proof in all medical malpractice cases and would only allow claims for reckless conduct against medical providers in emergency departments, is completely unwarranted and requires plaintiffs harmed by their doctor's negligent care to have a much more difficult time in proving their case. The bill sets forth a burden of proof that is a complete departure from the standard of proof required in all other negligence cases. Plaintiffs are already required to have experts testify in any malpractice claim. Why they should now have a much higher burden of proof than plaintiffs in all other civil cases is completely unwarranted.

Section 1. The proposed bill seeks to amend CGS Section 52-184c, which sets forth the burden of proof in medical malpractice cases. The "preponderance of the evidence" standard has always been applied in all negligence cases, not just malpractice claims. The bill seeks to substitute a "clear and convincing evidence" standard which historically has only been applied to cases involving allegations of fraud, libel, termination of parental rights, adverse possession and reformation of a contract or deed. *Kavarco v. T.J.E., Inc.*, 2 Conn. App. 294 (1984). Why the law should be so dramatically changed to afford protection to one class of negligent conduct is not explained by the proponents of the bill. Doctors should be held to the same standard as lawyers, accountants, engineers, contractors, property owners and the driver of a car whose negligence causes injury or death to another person.

The proposed bill adds a new sub-section (a)(3) that only applies to malpractice claims that arise out of treatment in the emergency room setting. Subsection (a)(3) would only allow a suit to be filed if the doctor or other ER provider was found to have acted with "reckless disregard" for the health of the patient. Once again, it is hard to fathom why we would want to lower the conduct expected of doctors in the emergency room setting so that they could only be held responsible for injury or death of a patient if they were reckless in treating the patient. If this bill was passed, should we then require ER departments to tell incoming patients that we can negligently kill you and get away with it? Furthermore, reckless conduct could very well be criminal in nature and not covered by medical malpractice insurance policies. This provision is at odds with all negligence law and should not be enacted.

Section 2 of the proposed bill seeks to dramatically change and expand an immunity already given to medical providers who voluntarily attempt to provide assistance in an emergency setting. For many years, this statute has provided a limited immunity to so-called "Good Samaritans" who attempt to provide medical assistance outside of their employment. This typically occurs where someone comes upon a person who has been injured or is extremely ill and needs immediate attention. In those cases, no claim for ordinary negligence can be made. The only claim that can be made is when the volunteer's conduct represents gross, willful or wanton negligence. The proposed bill seeks to completely change the standard of care expected in an emergency situation so that only conduct that constitutes reckless disregard for the person's health and safety is actionable. Why we would ever want to regress and expect less care and caution from our medical providers, even when they are acting as a mere volunteer, is unexplained by the proponents of this bill.

In conclusion, CTLA strongly opposed Raised Bill number 6622. It seeks to lower the level of care and caution expected of our physicians and other medical providers. At this time, with incredible advances in medical care becoming available with every passing year, to expect less of our doctors and to force injured patients to prove their cases by an unheard of standard of proof is indefensible. We urge the Committee to defeat Raised Bill 6622. Thank you.